IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 11363 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHKUMAR DEVISINH VAGHELA

Versus

ADDL.DIRECTOR GENERAL OF POLICE (ADMN)

Appearance:

MR MITUL K SHELAT for the Petitioner.

Ms.Harsha Devani, Assistant GOVERNMENT PLEADER, for the Respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/01/2002

ORAL JUDGEMENT

Father of the petitioner was serving as a Head Constable. He died while in service on 18.9.1999. After his death, the petitioner applied for compassionate appointment. However, the prayer of the petitioner was rejected on the ground that the income of the family of the deceased was more than Rs.2,500/-. The said decision dated 13.6.2001, is produced at page 38. While calculating the income, amount of pension is also taken into consideration. If that income is excluded, then, naturally, the remaining part of the income will be less than Rs.2,500/-. It is required to be noted that this

Court (Coram : M.R. Calla, J.) in Special Civil Application No.11020 of 1993 has taken the view that pension income is not required to be taken into consideration. Aggrieved by the aforesaid decision in Special Civil Application No.11020 of 1993, the State of Gujarat preferred an appeal, viz., Letters Patent Appeal No.739 of 1999. This Court (Coram : C.K. Thakker and C.K. Buch, JJ.) dismissed the said appeal vide order dated 13.8.1999. In that view of the matter, it is clear that while deciding the question of quantum of income of the family of the deceased, pensionary benefits are not required to be taken into consideration. The impugned order by which the prayer of the petitioner is rejected, is quashed and set aside. The matter is sent back to the Department for reconsideration and while taking the fresh decision and while arriving at the figure of income of the family of the deceased, pensionary income should not be taken into consideration. The decision in this behalf may be taken within three months from the date of receipt of the writ from this Court.

Petition is accordingly allowed. Rule is made absolute accordingly with no order as to costs.

Writ of this order may be sent to the Authority forthwith.

(P.B. Majmudar, J.)

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(apj)